

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of: )  
 )  
District of Columbia, )  
Department of Public Works, )  
 )  
Petitioner, ) PERB Case No. 87-A-08  
 ) Opinion No. 194  
and )  
 )  
American Federation of State, )  
County and Municipal Employees, )  
Local 2091 (on behalf of )  
James Butler), )  
Respondent. )  
\_\_\_\_\_)

DECISION AND ORDER

On June 10, 1987 the District of Columbia Department of Public Works (DPW) filed an Arbitration Review Request with the District of Columbia Public Employee Relations Board (Board) seeking review of an Arbitration Award served on the parties on May 21, 1987. The Arbitrator sustained the grievance, as more fully addressed later in this Opinion. DPW contends that the Arbitrator was without authority and exceeded the jurisdiction granted by the parties' collective bargaining agreement and that the award is contrary to law and public policy in violation of Section 502(f) of the Comprehensive Merit Personnel Act of 1978 (CMPA) (codified as District of Columbia Code Section 1-605.2 (6)).

Specifically, DPW urges that the Award should be set aside or remanded because the Arbitrator exceeded his authority by substituting his own evaluation of qualifications for that of a ranking panel authorized to make this determination and by ordering that the Grievant be placed in the position for which he applied. Finally, without citing any specific law or public policy, DPW argues that the award is contrary to law and public policy because it promotes an employee who cannot perform certain aspects of the job and who allegedly falsified his application for the position.

On June 18, 1987 the American Federation of State, County and Municipal Employees, Local 2091 (AFSCME) filed an Opposition to the Review Request contending that it should be dismissed because the Arbitrator's Award was within the authority

granted by the parties' agreement and is not contrary to law or public policy.

### I. The Arbitrator's Award

In concluding that the grievance filed by AFSCME on behalf of the Grievant, James Butler, must be sustained, the Arbitrator found that the ranking panel improperly evaluated the Grievant's credentials in judging him unqualified for the position of transfer operation worker. The Arbitrator found that the ranking panel's evaluation of the Grievant's experience was inconsistent with the evaluations the panel gave the other applicants. The Arbitrator noted that (1) the Grievant was found qualified by a DPW personnel staffing specialist on the same record; and (2) the factors relied upon by DPW in asserting that the Grievant is unqualified (failure to meet certain physical requirements) were not specified in the "crediting plan" and therefore were not considered by the ranking panel. <sup>1/</sup> Based on his finding that the Grievant was qualified for the position, the Arbitrator ordered DPW to promote the Grievant effective August 3, 1986.

### II. The Request For Review Must Be Denied

Section 1-605.2(6) grants the Board exclusive jurisdiction to consider appeals from grievance-arbitration awards, but limits review to cases in which the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or the award was procured by fraud, collusion or other similar means. The Board concludes that DPW's Review Request must be denied for lack of jurisdiction, as we find that the Arbitrator did not exceed his jurisdiction and that the Award is not on its face contrary to law and public policy.

An arbitrator derives his or her authority from the parties' agreement and any applicable statutory and regulatory provisions. In this case, the contract provision under which the grievance was brought was Attachment 11 to the Parties' Agreement,

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<sup>1/</sup> The "crediting plan" specified the knowledge, skills and abilities necessary to perform the duties of the position satisfactorily, which were set out in five categories; none of which the Arbitrator found to contain physical requirements.

"Seniority," Section C, which provides:

For employees in the Department of Public Works, Management has the right to determine job qualifications, provided that they are limited to those factors directly required to satisfactorily perform the job. The qualified employee with the greatest seniority shall be promoted [.]

The Arbitrator interpreted this provision to mean that DPW, in establishing that the Grievant was not qualified, was limited to those factors management had specified in the "crediting plan" as being necessary to satisfactorily perform the job and which the ranking panel had considered in determining the applicants' qualifications. Since the "crediting plan" contained no physical requirements for the position, the Arbitrator did not treat evidence of physical limitations as disqualifying the Grievant for the position.

DPW argues that the Arbitrator exceeded his authority because he "disregarded contract language which relates 'qualified' to [the] ability to perform the job satisfactorily" and disregarded the Grievant's testimony that he could not perform certain functions of the job because of physical limitations and medical reasons. The Board finds, however, in interpreting Attachment 11, Section C of the contract, the Arbitrator had the authority to disregard evidence of physical incapacity because, as he determined, it was irrelevant under the contract. The fact that DPW disagrees with the Arbitrator's interpretation does not provide a basis for finding that the Arbitrator exceeded his authority.

We reject DPW's argument that the Arbitrator improperly relied on the prior "qualified" ranking by a personnel specialist and therefore exceeded his authority. As noted above, the Arbitrator ruled that under the crediting plan used by the ranking panel the Grievant was qualified. It is immaterial whether his conclusion is supported in part by the prior ranking of a personnel specialist.

We also reject DPW's contention that the Arbitrator exceeded his authority when he issued an order which required DPW to create a position for the Grievant or to replace one of the employees selected who has performed satisfactorily. Since the issue before the Arbitrator was whether the Grievant was qualified for and entitled to the position, the Arbitrator, upon concluding that these questions could be answered in the affirma-

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tive, had the authority to order that the Grievant be placed in the position, and was not required to accept DPW's argument that the Grievant should be offered the transfer operation worker position only when a position becomes available in the future.

Although DPW argues that the Award is contrary to law and public policy because it promotes an employee who cannot perform certain aspects of the job and who allegedly falsified his application for the position, it has failed to establish this. As to the performance question, DPW's factual premise is incorrect for, as we have seen, the Arbitrator found that based on the record before him the Grievant was qualified to perform satisfactorily the functions of the job under criteria established by DPW. The issue of whether the Grievant falsified his application was not before the Arbitrator. DPW never raised the issue during the arbitration proceeding and the Arbitrator therefore properly did not address this issue. Under these circumstances, the Board cannot find that the Award is contrary to law and public policy.

For the above reasons, the Board concludes that the Arbitrator did not exceed his jurisdiction and was within his authority granted by the parties' agreement. We also find that the Award is not on its face contrary to law and public policy.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
October 24, 1988